No. 617

IN THE

Supreme Court of the United States

October Term, 1952

DISTRICT OF COLUMBIA, *Petitioner*,

v.

JOHN R. THOMPSON COMPANY, INC., *Respondent*.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR THE DISTRICT OF COLUMBIA

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I. The Thompson Company's argument that ordinances prohibiting racial discrimination are "general legislation" beyond the power of Congress to enact is without merit.

Basically, the "general versus municipal" concept relied on by respondent and the opinions of the majority judges of the court below rests on the imprecise and confused doctrine first introduced in *Roach* v. *Van Riswick*, MacArthur and Mackey 171, a case decided in 1879 by the Supreme Court of the District of Columbia in General Term.

The question involved in *Roach* v. *Van Riswick* was whether an Act of the Legislative Assembly making judgments obtained in the Supreme Court of the District of Columbia liens on equitable interests in real estate was valid. The judgment was that that Act was of the character of "general legislation" which Congress could not delegate to the Legislative Assembly authority to enact.

A glaring flaw in the court's reasoning in the *Roach* case (pp. 178-179, quoted at R. 70-71) is in its *non sequitur* that if there were separate systems of law in each of three or four municipalities within the District of Columbia, there would be "great confusion and perhaps conflict" and that the consolidation of such municipalities would not change the essential character of the problem. But, of course, in the absence of a multiplicity of municipalities there could be no such conflict, since there would be but one "system of law". If the reasoning of the *Roach* case were valid, it would equally apply to States: a State would have no greater or different powers than those of its "consolidated" municipalities.

The statement in the *Roach* opinion (p. 176) that "municipal regulation . . . is universally recognized as something distinct from the exercise of legislation" is clearly inconsistent with numerous decisions by this Court holding that a municipal ordinance is legislation just as much as a State law. *St. Paul Gaslight Co.* v. *St. Paul*, 181 U. S. 142, 148.

Furthermore, the authority of the *Roach* decision on the question of non-delegability of general legislative powers has been entirely undermined by subsequent decisions both of this Court and in the District.

Within six months, the Supreme Court of the District of Columbia in General Term found it necessary to correct the erroneous impression created by the *Roach* decision. In *Cooper* v. *The District of Columbia*, MacArthur and Mackey 250, while holding that the Act of the Legislative Assembly approved August 23, 1871, which imposed a license

tax on produce dealers in the Washington Market was a valid enactment, that Court said:

> "The District of Columbia as a municipality is differently constituted from any other city in any State of the Union. In all other cities there are five sources of power, differing in dignity, superior to the municipal ordinances: first, the Constitution of the United States; second, treaties; third, laws of Congress made in pursuance of the Constitution; fourth, the Constitutions of the States; and fifth, the laws of the States. As no State constitution and no State laws are in force here, the place of these two jurisdictions must be assumed by Congress, which necessarily possesses the power to make the grants to the municipality which are ordinarily made to city governments by the constitution and laws of a State.
>
> "1st. It is insisted that this court has decided that the power of Congress in this particular is not as full as that of the States, with reference to the cities within their borders, and the case of Roach *vs.* Van Riswick is referred to as supporting this distinction. It is evident, however, that that case gives no support to this doctrine. All that was decided there was that Congress had no right to bestow upon the legislative assembly of the District any powers which were not necessary for it *as a municipality;* but the decision expressly, in more than one place, declares that whatever was granted by Congress to the legislative assembly of the District, in respect to matters properly pertaining to municipal government, was a valid grant. Indeed, it could not have been held otherwise, since the Supreme Court of the United States, in Welsh *vs.* Cook, 7th Otto, 542, had declared: 'It is not open to reasonable doubt that Congress had power to invest, and did invest, the District government with legislative authority, or that the act of the legislative assembly of June 26, 1873, was within that authority.'"

In the case of *Stoutenburgh* v. *Hennick*, 129 U. S. 141, both parties relied on *Roach* v. *Van Riswick*. The question there presented was whether the Act of the Legislative Assembly approved August 23, 1871, which had been held valid in *Cooper* v. *The District of Columbia*, was valid when applied to a drummer selling goods by sample in the District of Columbia on behalf of his principal, a resident of Baltimore, Maryland. Examination of the decision of the Supreme Court of the District of Columbia in *Re William J. Hennick*, 5 Mackey 489, the judgment in which was reviewed in *Stoutenburgh* v. *Hennick*, shows that the sole question was whether or not the Act of the Legislative Assembly imposed a burden on interstate commerce. It was to correct the erroneous impression created by the decision in *Roach* v. *Van Riswick* that this Court stated the basic tenet with which it opened its decision as follows:

> "It is a cardinal principle of our system of government, that local affairs shall be managed by local authorities, and general affairs by the central authority; and hence while the rule is also fundamental that the power to make laws cannot be delegated, the creation of municipalities exercising local self government has never been held to trench upon that rule. Such legislation is not regarded as a transfer of general legislative power, but rather as the grant of the authority to prescribe local regulations, according to immemorial practice, subject of course to the interposition of the superior in cases of necessity."

In other respects the case of *Roach* v. *Van Riswick* has been overruled by later decisions of this Court. For example, in the *Roach* case, after referring to *Scott* v. *Sandford*, 19 How. 393; *American Insurance Company* v. *Carter*, 1 Pet. 511, and *United States* v. *Gratiot*, 14 Pet. 526, Judge Cox said (p. 182):

> "*Non nostrum est tantas componere lites* (It is not our duty to compare the greatest cases), but until it can be considered as settled, that the power to dispose of and make all needful rules and regulations respecting the territory, *or other property* belonging to the United States,' is identical with the power to exercise exclusive legislation over such District as may become the seat of government, the practice of Congress in regard to the territorial governments furnishes us no authoritative guide in the interpretation of the clause relating to the District of Columbia."

But the comments of this Court in later decisions do provide the authoritative guide which Judge Cox found lacking. In the *Civil Rights Cases*, 109 U. S. 3, 19, this Court said:

> "We have also discussed the validity of the law in reference to cases arising in the States only; and not in reference to cases arising in the Territories or the District of Columbia, which are subject to the plenary legislation of Congress in every branch of municipal regulation. * * *"

Again in *Binns* v. *United States*, 194 U. S. 486, 491, this Court said:

> "It must be remembered that Congress, in the government of the territories as well as of the District of Columbia, has plenary power, save as controlled by the provisions of the Constitution; * * *"

And in *Simms* v. *Simms*, 175 U. S. 162, 168, this Court held:

> "In the territories of the United States, Congress has the entire dominion and sovereignty, national and local, Federal and state, and has full legislative power over all subjects upon which the legisla-

ture of a state might legislate within the state; and may, at its discretion, intrust that power to the legislative assembly of a territory."

Even the substantive rule evolved in the *Roach* case (respecting the power of Congress to authorize the municipal government to empower its courts to provide that court judgments shall operate as liens on equitable interests) was soon repudiated by the Supreme Court of the District of Columbia. In *Johnson* v. *The District*, 6 Mackey (17 D. C.) 21, 25, the Court said: "Municipal corporations, of course, have no authority to create liens by ordinance or otherwise, *when none has been expressly conferred upon them;* and taxes are not liens upon the property against which they are assessed, unless they are made so by charter, *or unless the corporation is authorized by the legislature to declare them to be liens.*" (Emphasis supplied.)

In view of all of the foregoing, it is submitted that the language in the *Roach* case can no longer be regarded as authority for the constitutional construction for which it has been cited by respondent and the Court of Appeals. And see the numerous decisions of this Court cited in the brief for the United States (pp. 20, 27-32, 39, 44-46) which uphold the power of Congress to delegate comprehensive local legislative authority to the District of Columbia.[1]

In any event, as *Cooper* v. *The District*, MacArthur and Mackey (11 D. C.) 250 shows, the *Roach* case decided only that powers *not necessary* for the District as a municipality were not bestowed. The question remains (and was else-

[1] The uniform view of the Founders of the Constitution that Congress could and would delegate broad local powers of self-government was expressed not only by Madison in The Federalist, No. 43, but also by many others, including Jefferson.

See Journals of the Continental Congress (1774-1789), Report of Committee, pp. 603, 604 (September 22, 1783);
Padover, *Thomas Jefferson and the National Capital*, "Jefferson's Opinion," pp. 47, 48, lines 10-16 (G. P. O. 1946).
Cf. President Adams' first Address to Congress in Washington, *Annals of Congress* (1799-1801), p. 723 (November 22, 1800) urging "local powers" and "self-government" for the District of Columbia.

where decided affirmatively in the *Roach* case) whether regulation of places of public accommodation *is* an appropriate power of a municipality. Thus, the *Roach* case recognized that (p. 176) "the regulation of local concerns in a town, is considered as properly belonging to its inhabitants . . . and it is hardly looked upon as a delegation of *legislative* authority . . ." To illustrate what is a proper "regulation of local concerns," the court said (p. 178): ". . . universal usage and legislation recognize the preservation of public order, morals and health, the regulation of markets and places of amusement. . ." and other enumerated powers "as appropriate powers of a municipality" and distinguished such powers from matters relating to titles to property, contracts, commercial law, crimes, etc. Clearly, the regulation of places of public amusement and accommodation, such as restaurants, by prohibiting the denial of service simply because of race or color is one of the "appropriate powers of a municipality" within the square ruling of the *Roach* case, even conceding the restrictive scope of acts relating to municipal affairs, as there drawn.

II. None of respondent's other arguments has any merit.

Respondent has abandoned the theory that the 1872 and 1873 Acts were repealed by implication by the 1878 Organic Act, the sole ground on which the Municipal Court held them ineffective. That theory was completely refuted by Chief Judge Cayton in the Municipal Court of Appeals (R. 33-34). However, respondent's brief urges other arguments not relied upon or referred to in the majority and concurring opinions below. Presumably the judges in the court below would not have ignored these arguments if they were considered to possess any merit. Nevertheless, since respondent is again urging them they will be answered.

At the outset it is important to note that the agreed statement of facts, quoted at pages 2 and 3 of respondent's brief,

was not a statement of the facts on which this case was predicated. It was entered into in an earlier prosecution against respondent, No. 99150, and not in this case, 111,019. It is included in the record in this case solely as part of the memorandum opinion of Judge Myers, upon the basis of which he, *sua sponte*, quashed the information in this case.

A

Restaurant Regulations promulgated by the Commissioners on April 1, 1942, did not repeal the Acts of 1872 and 1873.

Respondent's argument that the 1872 and 1873 Acts were repealed by the Restaurant Regulations adopted by the Commissioners in 1942 is obviously without merit. Section 5 of the Commissioners' 1942 Regulations (respondent's brief, p. 43) is a repealing clause which repeals "all existing regulations or parts of regulations *inconsistent* with these regulations" (emphasis supplied). Thus the regulations repeal only *inconsistent* regulations, and there is surely no inconsistency between the Commissioners' regulations of 1942 and the 1872 and 1873 Acts. The regulations do not purport to be a complete codification or restatement of all the numerous regulatory provisions of law applicable to restaurants. These regulations deal only with health and sanitation requirements. They do not purport, in terms or effect, to encompass regulations of a different nature to which restaurants are amenable, e.g., building and seating restrictions, labor requirements, egress, hours of service, prohibitions against serving alcoholic beverages to certain classes of persons (minors, intoxicated persons), etc., etc.

The non-discrimination provisions of the 1872 and 1873 laws were not affected by the regulations, and both can exist in complete harmony. Even respondent does not contend that the restaurant is immune from the various provisions of law relating to zoning, egress, building construction, health, alcoholic beverages, and minimum wages by reason of the promulgation of the 1942 restaurant regula-

tions. Judge Fahy effectively answered respondent's contention. He said (R. 116):

> "The 1942 regulations do not constitute and there is not in existence a complete codification of ordinances regulating restaurants, so that in fact there has been no omission of the equal service provisions from such a codification."

B

The Alcoholic Beverage Control Act of 1934 did not repeal the 1872 and 1873 Acts.

Respondent urges that the 1872 and 1873 Acts have been repealed by the Alcoholic Beverage Control Act of 1934 either on the ground that the latter Act "completely covered the field of the Acts of 1872 and 1873, at least in so far as the sale of liquor is concerned" (Resp. Br. p. 19), or that there are inconsistencies between the ABC Act and the Acts of 1872 and 1873 with respect to sales "to a well-behaved minor" (Resp. Br. p. 20).

Respondent's argument completely misconceives the effect of the ABC Act. The Alcoholic Beverage Control Act of Jan. 24, 1934 (48 Stat. 319, as amended; D. C. Code 1951 ed., sec. 25-101, *et seq.*) regulates simply the sale and use of liquor, beer and wine, including the licensing of places dispensing such beverages. It does not relate to the licensing of restaurants to conduct a restaurant business. Nor is it inconsistent with laws, such as the 1872-1873 Acts, relating to racial discrimination in places of public accommodation. The fact that the A. B. C. Board has jurisdiction to revoke a *liquor license* for violation of the Alcoholic Beverage Control Act (D. C. Code, 1951 ed., sec. 25-106) is not inconsistent with, nor does it preclude, revocation of a *restaurant license* and imposition of a $100 fine for violation of the 1872-1873 Acts. Even if there were a possible conflict between the prohibition against service of liquor to a minor

and the prohibition against denial of service to a well-behaved respectable person, no such question is here involved. The persons refused service in this case were adults, and the Thompson Company neither has a liquor license issued under the Alcoholic Beverage Control Act, nor, presumably, sells liquor. But there is no such conflict: the ABC Act prohibits simply the sale of liquor to minors, the 1872-1873 Acts prohibit racial discrimination.

Chief Judge Cayton, speaking for the majority of the Municipal Court of Appeals (R. 36) effectively disposed of respondent's contention in the following words:

> "The 1872 and 1873 Acts deal with an over-all regulation of various services (restaurants for example); the ABC Act merely places further restrictive regulations upon sales of liquor—which has traditionally been the subject of separate regulation. Both in their own way regulate a different aspect of public health, safety and order. They exist and operate concurrently. For practical purposes the later Act may be regarded as 'merely affirmative, or cumulative, or auxiliary.' *Wood* v. *The United States*, 16 Pet. 342."

C

The General License Law of 1902 as reenacted in 1932 did not repeal the 1872 and 1873 Acts.

Equally lacking in merit is respondent's contention that the 1872 and 1873 Acts were repealed by the General License Law of 1902 and 1932. The latter Acts do not mention the 1872 and 1873 Acts and are in no way inconsistent with them. Moreover, both of these laws provided that nothing therein "shall be interpreted as repealing any of the police . . . regulations of the District of Columbia regarding the . . . conduct of the businesses . . . herein named". (32 Stat. 590, 629; 47 Stat. 550, 551; D. C. Code, 1951 ed., sec. 47-2307).

The U. S. Court of Appeals for the District of Columbia Circuit has repeatedly held that the License Law was not inconsistent with and did not repeal earlier acts which, like the 1872-1873 Acts, protect the public by regulating the "conduct of the businesses". *Richards* v. *Davison*, 45 App. D. C. 395 (1916); *District of Columbia* v. *Lee*, 35 App. D. C. 341 (1910); *United States ex rel. Early* v. *Richards*, 35 App. D. C. 540 (1910).

The subject matter of the 1932 Act is wholly different from the subject matter of the Acts of 1872 and 1873. The suggestion in the Respondent's Brief (pp. 17-18) that there is an inconsistency between them because of their different sanctions (violation of the 1932 Act is subject to fine up to $300 or imprisonment up to 90 days and forfeiture of license in the Commissioners' discretion, whereas violation of the Acts of 1872 and 1873 is subject to $100 fine and forfeiture of license upon conviction) misconceives the issue. The sanctions are for two different types of violations. Violation of the 1932 Act evokes one sanction; violation of the Acts of 1872 and 1873 evokes another. The fact that the Commissioners may revoke a license for violation of the 1932 Act has no bearing on the forfeiture of a license for violation of the Acts of 1872 and 1873, because neither law has any relation to the other.

The authority given to the Commissioners by the Act of 1932 to revoke business licenses is in no way diminished by the continued existence of the Acts of the Legislative Assembly, which provide for the mandatory forfeiture by a violator of his license. A comparable provision is that found in the Traffic Act for the mandatory revocation of automobile operators' permits upon conviction of certain offenses, with discretionary power vested in the Commissioners or their designated agent (Sec. 40-302, D. C. Code, 1951) to revoke permits "* * *" for any cause which they or their (designated) agent may deem sufficient" in those cases where revocation is not mandatory.

The lack of connection between the 1932 Act and the 1782-1873 Acts is shown by the legislative history of the 1932 Act. Its purpose was "to remove existing inequalities and inequities" in the license fee schedule found in the Act of July 1, 1902. (H. Rep. No. 1385, 72d Cong., 1st Sess., p. 3; S. Rep. No. 867, 72d Cong., 1st Sess., p. 3.) The act amended the prior act to change many of the fees theretofore in existence so as to base them on the cost of inspection, the use of public space or the expense of maintaining a needed regulatory body, occasioned by the various forms of businesses covered. (*Ibid.*) It was concerned only with new rates of taxation and not with pre-existing restrictions or regulations governing the businesses taxed.

D

Sec. 48 of the 1901 Code, authorizing the Police Court to enforce its judgments by fine or imprisonment, did not repeal the 1872 and 1873 Acts.

Respondent argues on p. 15 of its brief that a repeal of the 1872 and 1873 Acts can be implied from the fact that the Municipal Court for the District of Columbia has no power to impose a forfeiture of license, whereas a forfeiture of license is provided for under the 1872-1873 Acts.

Forfeiture of license of a regulated business for violation of an Act of Congress or Act of the municipal legislative body or regulation of the Commissioners has been a historic and traditional method for the enforcement of the Acts and regulations governing such businesses in the District. Thus the Act of May 3, 1802, 2 Stat. 195, which incorporated the City of Washington, authorized the Council of the City of Washington "to pass all by-laws and ordinances . . . to provide for licensing and regulating" certain businesses and "to impose and appropriate fines, penalties and forfeitures for breach of their ordinances; . . ." (App. to D. C. Brief, p. 3). A similar provision was included in the Act of May 15,

1820, 3 Stat. 583, Sec. 7 (App. to D. C. Brief, p. 4). This authority was exercised by the Council of the City of Washington by adopting ordinances providing for forfeiture of licenses. See ordinances of December 15, 1810 (App. to D. C. Brief, p. 19); ordinance of June 3, 1853 (App. to D. C. Brief, p. 20); and ordinance of October 31, 1864 (App. to D. C. Brief, p. 21). This procedure was specifically approved by Congress by keeping those ordinances in effect by enactment of Sec. 40 of the Organic Act of February 21, 1871.

Judge Cayton held (R. 31) respecting this contention of respondent:

> "The Acts are also attacked on the ground that they provide for the forfeiture of licenses. But the object of these Acts is not the collection of a fine or the revocation of a license. See *District of Columbia* v. *Brooke*, 29 App. D. C. 563. These are merely the enforcement features of the Acts.
>
> "Nor is there merit in defendant's contention that the Acts must fail because the Municipal Court was given no power to forfeit licenses. The short answer is that such power need not and does not rest in the court but in the District of Columbia Commissioners who issued the license in the first place. And there are many instances in which the Commissioners have the power to revoke licenses as a result of court judgments or independently of court action."

The premise of respondent's argument in this connection is that Congress has withheld from the Municipal Court jurisdiction to enter an order requiring forfeiture of license of an establishment convicted of violation of the Acts. From this premise the conclusion is reached that Congress has thereby repealed the entire body of the Acts. This conclusion is as erroneous as the premise is irrelevant. Forfeiture of licenses is accomplished by administrative proceedings, if the violator should fail to surrender its license as required by the Acts; the Acts do not contemplate that the

court should enter any order which by its own force effects a forfeiture. Cf. *City of Duluth* v. *Cerveny*, 218 Minn. 511, 16 N. W. (2d) 779, 785. Hence, the existence or lack of existence of jurisdiction in the Municipal Court to decree forfeiture is of no significance whatsoever in the judicial proceeding, such as is presented here, to determine (a) whether violations of the Acts have occurred, and, if so, (b) what fine, not exceeding $100, should be imposed for each such violation.

Finally, it is obvious that even assuming an absence of authority in the Legislative Assembly to include a forfeiture provision in the Acts of 1872-73, only the forfeiture would be nullified. *District of Columbia* v. *Armes*, 8 App. D. C. 393, 415-416; *Cooper* v. *The District*, MacArthur & Mackey, 250, 258. It would have no effect whatever on the Acts themselves or upon their enforcement by fine alone. *Continental Oil Co.* v. *City of Santa Fe*, 36 N. M. 343, 15 P. (2d) 667, 670; *City of Cartersville* v. *McGinnis*, 142 Ga. 71, 82 S. E. 487, 491; *City of Greenville* v. *Pridmore*, 86 S. C. 442, 68 S. E. 636; *Norwood* v. *Wiseman*, 141 Md. 696, 119 Atl. 688, 691; *Rosencrans* v. *Eatontown Tp.*, 80 N. J. L. 227, 77 Atl. 88, 91; *Sconyers* v. *Town of Coffee Springs*, 230 Ala. 206, 160 So. 552; *State* v. *Cantieny*, 34 Minn. 1, 24 N. W. 458; cf. *Berea College* v. *Kentucky*, 211 U. S. 45, 54-5.

E

This prosecution did not take respondent by surprise.

Respondent states at p. 20 of its brief, that the Acts of 1872 and 1873 "were resurrected for this particular prosecution". It is true that this case is a test case, to establish the validity of those Acts. But it is not true that this is a persecution of a defendant who knew nothing of his obligations or of the requirements of the law. The question of the validity of these Acts was a matter of considerable newspaper comment for many months prior to the public announcement by the Commissioners on February 21, 1950,

that the laws were considered valid and enforceable. This announcement was given prominent publicity in the daily newspapers of Washington. See, e.g., *Times-Herald*, February 22, 1950.

Thereafter, a prosecution was initiated in March 1950 when respondent Company knowingly challenged the validity of the law by refusing to admit into its restaurant well-behaved and respectable persons solely because of their race. (Case No. 99150, in the Municipal Court for the District of Columbia, R. 4, 17). That case was dismissed and an appeal was abandoned solely because of technical questions of jeopardy. The violation on which this prosecution is based took place some time thereafter and respondent should be presumed to have had full knowledge that a prosecution would be initiated against any violator of the Acts against whom a complaint might thereafter be instituted. Respondent deliberately chose to test the law. It was not an unknowing defendant. As Judge Fahy said (R. 118):

> "The truth is the regulations simply lay unused for many years. This does not justify the intimation that they were unknown to appellant Company until after it violated them, or that they are conditions imposed upon licenses, or that they have been abandoned by omission from non-existent compilations of regulations, or that they are vague. Because of long non-use, because of the legal question of the competence of the Legislative Assembly to enact them, and because of the question whether they have been repealed, the District authorities seek to establish their legal status before insisting upon general compliance. This is a reasonable course to pursue."

The criticisms of the mechanical approach adopted by the prosecution to determine the validity and enforceability of these Acts of the Legislative Assembly have been both epitomized and answered in the opinion of Chief Judge Stephens below. He said (R. 88) "But we think it appropriate to comment, in this connection, that the enactments

having lain unenforced for 78 years, in the face of a custom of race disassociation in the District, the decision of the municipal authorities to enforce them now, by the prosecution of the instant case, was, in effect, a decision legislative in character."

With all due deference to his view, it was never the purpose of the prosecution to legislate. On the contrary, it was the purpose of the prosecution to raise the question for judicial determination, in strict accord with the view of Chief Judge Stephens expressed in the same opinion, to the effect that "(t)hat question must be determined by the courts." (R. 85)

From the time of filing of information in the instant case to the present, that has been the only purpose of the petitioner.

F

The "Legislative History" of the 1901 Code Submitted by the Washington Board of Trade, Amicus Curiae, is Incomplete.

The Washington Board of Trade, as *amicus curiae*, has submitted a memorandum to the Court which apparently purports to be a complete legislative history of the 1901 Code for the District of Columbia. However, it contains only the beginning and the end of such legislative history and entirely omits the middle. Of course, Judge Cox's original draft was intended as a comprehensive codification of all existing statutes then applicable in the District. Had it been enacted by Congress in the form in which he originally drafted it, the 1872 and 1873 Acts of the Legislative Assembly would unquestionably have been repealed.

The Board of Trade memorandum fails to refer to the very significant changes made in Judge Cox's draft prior to its submission to Congress. This history is thoroughly reviewed in the brief for the United States, pp. 64-67, and need not be repeated here in detail. The short of the mat-

ter is that Judge Cox divided the Code into two parts, the first, dealing with so-called "general and permanent" statutes, and the second, covering statutes dealing with "municipal affairs". Before its introduction in Congress, Judge Cox's draft was reviewed by special committees of the Board of Trade and the Bar Association, by the judges of the Supreme Court of the District of Columbia, and by other interested persons. 9 Rep. Wash. Bd. of Trade 20-21, 134 (Nov. 1899); 10 *id.* 5-7, 138-142 (Nov. 1900). The special committee of the Board of Trade reported as follows (10 *id.* at 139):

> * * * it was found impossible, in the time at command, to thoroughly review the second or municipal part of Judge Cox's code. So that the code as submitted to Congress contained only the first or general part of the code touching matters of general jurisprudence.

In other words, even though Judge Cox's original draft was of a comprehensive nature, the code as revised prior to its introduction in Congress eliminated his Part II dealing with municipal laws. This is clearly set forth in the House Committee Report. See H. Rep. No. 1017, 56th Cong., 1st Sess., p. 5.

Respectfully submitted,

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